

Proposed amendments to the Nebraska Supreme Court Uniform County Court Rules of Practice and Procedure at Neb. Ct. R. §§ 6-1433, 6-1442, 6-1442.01, 6-1442.02, 6-1443, 6-1445 and 6-1445.01 were drafted by county court Judges Susan M. Bazis and Todd J. Hutton in cooperation with a subcommittee of the Nebraska State Bar Association. The amendments have been reviewed and approved by the NSBA Executive Council and House of Delegates and, thereafter, were submitted to the Nebraska Supreme Court for consideration.

The Nebraska Supreme Court invites interested persons to comment on these proposed rule amendments. Anyone desiring to comment on the proposed rule amendments should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to [lanet.asmussen@nebraska.gov](mailto:lanet.asmussen@nebraska.gov), no later than May 1, 2013.

The proposed rule amendments are listed below:

**§ 6-1433. Notice of interested person duty; guardian and conservator notice requirements; court notice requirements.**

(A) In all probate matters, it shall be the duty of the petitioner or applicant for probate of a will or appointment of a personal representative, guardian, or conservator to show in the petition or the application the names, relationship to the subject of the petition or application, and last known post office address of all interested persons. If any interested person is known by the petitioner, applicant, or the attorney for either to be incompetent or a minor, such fact shall be disclosed to the court.

(B) It shall be the duty of a guardian or conservator to:

(1) notify the court of the change of address of the ward or protected person within 3 days of the change;

(2) notify the court of the ward or protected person's death within 3 days;

(3) send a notice of right to object form with all inventories, notices of newly discovered assets, annual accountings, and condition of ward reports that are sent to interested parties;

(4) send a notice of interested party form to all interested parties at the time of mailing the initial inventory; and

(5) send all annual accountings, all inventories, all notices of newly discovered assets, and all condition of ward reports filed with the court to all interested parties unless waived by the court for good cause shown.

(C) All courts shall:

(1) hand out the Quick Reference Guide with sample forms attached to guardians and conservators when Letters are delivered;

(2) ensure that all interested parties are on the affidavit of mailing for inventories, annual accounting, condition of ward reports, and motions that are filed with the court. If all interested parties are not on the affidavit of mailing, the court shall issue a Notice of Need for Corrective Action(s) form and send it to the person who filed the document(s) to correct the affidavit of mailing and send the document to all interested parties; and

(3) send out reminders to guardians and conservators indicating annual filing deadlines 45 days prior to the annual filing due date.

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**§ 6-1442. Conservator/guardian inventory and accounts; initial filing; annual filing; amended inventories; restricted accounts; court review.**

(A) Within 30 days after appointment, every guardian or conservator, except a guardian appointed by a juvenile court pursuant to the Nebraska Juvenile Code, shall prepare and file with the court a complete inventory of the estate of the protected person pursuant to Neb. Rev. Stat. § 30-2647 and 30-2628, together with his or her oath or affirmation that it is complete and accurate as far as he or she is informed. The inventory shall be sent to all interested parties with a notice to object form, notice of interested party form, and affidavit of mailing showing copies were sent to all interested parties by first-class mail. If an inventory is not filed within 30 days after the date it is due, the court shall issue an order to show cause why the guardian or conservator should not be removed and shall set the same for hearing.

(B) Unless waived for good cause shown or otherwise ordered by the court, every conservator or guardian that has control of the ward's estate shall, not later than 30 days after the expiration of 1 year after Letters are issued and annually thereafter, file with the court a complete accounting of his or her administration with a certificate of proof of possession form, along with the required fee and an affidavit of mailing showing that copies and a notice to object form were sent to all interested parties, including the bonding company by first-class mail postage prepaid. The accounting shall include an updated inventory. Bank statements and brokerage reports or statements shall be submitted with all accountings unless waived by the court for good cause shown.

(C) All guardians who do not have control of the ward's estate shall file an updated inventory every year based on reasonably available information unless waived by the court for good cause shown.

(D) A conservator who has restricted accounts shall file with the court a proof of restricted account form within 10 days of being appointed.

(E) A notice of newly discovered asset form is required to be filed within 30 days after the guardian or conservator becomes aware of additional assets, gifts, awards, settlements, or inheritances over \$500 not disclosed in the current inventory.

(F) The court shall monitor all cases in which annual accountings are required to see that the accountings are filed in a timely manner. If an accounting is not filed within 30 days after the date it is due, the court shall issue an order to show cause why the guardian/conservator should not be removed and shall set the same for hearing.

(G) All accountings, inventories, annual budget reports, and condition of ward reports filed with the court shall be reviewed by a clerk magistrate, probate supervisor, court staff, or guardian ad litem, if one is appointed, or by an independent third party approved by the State Court Administrator's Office, if available, unless waived by the court. If there is a problem and/or concern with the report, the matter shall be set for hearing before the court with notice to all interested parties.

(H) The court shall schedule a formal due process hearing to approve the accounting upon (1) a petition requesting approval by the guardian/conservator, (2) the request or objection of any interested party, or (3) the court's own motion. Notice of such hearing must be given to all interested parties and the protected

person's interest safeguarded as provided in the filing of the original petition (see Neb. Rev. Stat. § 30-2636).

**§ 6-1442.01. Budget process in guardianships and conservatorships.**

(A) A guardian or conservator or a nominated guardian or conservator may request the court to allow the guardian and/or conservator to annually file a budget summarizing the receipts and disbursements expected to be expended for the year.

(B) If authorized by the court, the budget may allow for payments to the guardian and/or conservator for items such as rent, room and board, and guardian and/or conservator fees. Effectively, this is a preapproval of these payments, and payments up to the amounts approved are authorized. Anything above the budget amounts remains subject to § 6-1437(B).

(C) At the end of the year unless otherwise ordered by the court, the guardian and/or conservator shall file a report summarizing the payments made under the budget listing any payments beyond the budget, a copy of the last bank statement, an inventory at the end of the year and may request a budget for the next year. These documents shall be sent to all interested parties unless waived by the court for good cause shown.

(D) Court authorization under this rule shall be made at a hearing after notice to all interested parties. However, if the waiver of notice and hearing is signed by all interested parties, the court may enter the order without further notice and without further hearing.

(E) If a budget has been approved the guardian or conservator shall not be required to file an annual accounting unless otherwise ordered by the court.

(F) If the court authorizes ATM withdrawals or cash back on a debit transactions as part of an approved budget the Letters of the guardian and/or conservator shall be so modified.

(G) If additional assets are received during the year for which notice to the court is required under these rules, the court may review the budget during the year and the bond.

**§ 6-1442.02. Guardian's with limited authority; authority limited to not handling any assets of the ward.**

A guardian or nominated guardian may apply to the court for an order that provides that the guardian shall have no authority over the estate of the ward.

(A) If that order is obtained, then the guardian shall have no authority over the estate of the ward which restrictions shall be included on the Letters issued. If the guardian becomes a representative payee, the guardian shall notify the court and interested parties within 7 days of receiving notice of becoming a representative payee and shall apply to the court to have the guardian's Letters appropriately modified. The guardian shall remain subject to the requirement of § 6-1442(E).

(B) Upon application of a guardian who has received an order under this section, with notice to all interested parties, the updated inventory may be waived by the court for good cause shown.

(C) If the guardian becomes the representative payee or has control of other assets of the ward, the guardian shall file an accounting with the court.

**§ 6-1443. Conservator/guardian Letters.**

(A) Prior to being issued Letters, the guardian or conservator shall file the following with the court unless waived by the court for good cause shown:

(1) an acceptance, address information sheet, general information sheet, inventory with an affidavit of due diligence, and a bond if required; and

(2) an acknowledgment of financial institution form showing that the order appointing them guardian or conservator was provided to each financial institution in which the ward, protected person, or minor has an account/assets;

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**§ 6-1445. Filing requirements; guardian/conservator standardized forms.**

(A) Any order, notice signed by the court or the registrar, and the petition application or pleading on which it is based, is deemed to be immediately filed upon affixing of the court file stamp. In no instance shall any documents be taken from this court until they have been filed, posted, filed for permanent record, and placed in the court file.

(B) All courts shall accept for filing only the standardized forms approved by the State Court Administrator's Office as provided on the Nebraska Judicial Branch Web site in guardianship and conservatorship matters for any filings for which a standardized form exists unless waived by the court for good cause shown.

**§ 6-1445.01. Waivers of rules in guardianships and conservatorships; procedure.**

(A) In a guardianship or a conservatorship proceeding, where a waiver for good cause shown is requested, the following procedures shall apply:

(1) A request for waiver shall be made upon application and may be considered by the court after a hearing upon notice to all interested parties.

(2) Notice of any hearing shall be given by the applicant as required by the Nebraska Probate Code.

(3) Proof of sending the application and notice of hearing to all interested parties shall be filed with the court by the applicant.

(4) The hearing upon the application may be waived if the waiver requested is approved in writing by all interested parties. The court may then enter the order without further notice and without further hearing.

(5) The court may enter an order specifying what rule requirements have been waived. Upon request by any interest party, the court shall set forth its findings in the order.

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